



June 7, 2002

Ms. JoAnn S. Wright
Walsh, Anderson, Brown, Schulze & Aldridge
P.O. Box 168046
Irving, Texas 75016-8046

OR2002-3078

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163991.

The Alvarado Independent School District (the "district") received a request for all electronic correspondence sent or received by a particular e-mail account during a specified period of time. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.107, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that some of the information you have submitted is not subject to the Public Information Act (the "Act"). Chapter 552 is only applicable to public information. *See* Gov't Code § 552.021. Section 552.002 defines "public information" as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business[.]" *Id.* § 552.002(a). Some of the e-mail messages you have submitted to this office for review do not appear to meet the definition of "public information," as they do not relate to the transaction of official business. Therefore, the e-mail messages which we have marked do not constitute "public information." Thus, this information is not subject to disclosure under chapter 552. *Cf.* Open Records Decision No. 635 at 7 (1995).

We next note that some of the submitted information constitutes personal family information under section 552.117. Section 552.117 excepts from disclosure the home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district must withhold information under section 552.117 on behalf of current or former officials or employees who

made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. The district may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential. We have marked the information that must be withheld under section 552.117 for employees that made timely elections under section 552.024.

You contend that portions of the submitted information are confidential under common law privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and incorporates the doctrine of common law privacy.¹

For information to be protected from public disclosure under common law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

Furthermore, this office has concluded that common law privacy protects some kinds of medical information or information indicating disabilities or specific illnesses. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked the information that must be withheld under section 552.101.

You next assert that some of the submitted information is excepted under section 552.107. Section 552.107(1) of the Government Code excepts information "that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct[.]" While section 552.107(1) appears to apply to information within rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, this office determined that section 552.107 cannot be applied as broadly as written to information in the possession of an attorney for a governmental body. Open Records Decision No. 574 (1990). Section 552.107(1) protects only the attorney's communication of legal advice or opinion to the client and communications from a client to an attorney where those communications are made in confidence and in furtherance of the attorney rendering professional legal service to the governmental body. *Id.* at 5. We determine the

¹You also raise section 552.102, which protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as the protection provided by the common law right to privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). However, as we do not consider the e-mails to be part of the employee's personnel file, we find section 552.102 to be inapplicable to the requested information.

applicability of section 552.107(1) on a case-by-case basis. Here, you state that the information you do not wish to disclose consists of e-mail communications between the district's attorney and a school principal. We agree that portions of the information consist of confidential communications that either reveal client confidences or contain legal advice or opinion. Consequently, you may withhold the information we have marked under section 552.107.

Finally, you assert that some of the submitted information is excepted from disclosure under section 552.137. Section 552.137 requires the district to withhold e-mail addresses of members of the public that were provided for the purpose of communicating electronically with a governmental body, unless the members of the public have affirmatively consented to their release. As there is no indication that the members of the public have consented to release of the email addresses in question, the department must withhold from disclosure the e-mail addresses of members of the public in the submitted information, which we have marked, pursuant to section 552.137 of the Government Code.

In summary, we have marked information that is not subject to the Act, and need not be released. The district must withhold the information we have marked under sections 552.101. The district may withhold the information we have marked under section 552.107(1). You must withhold the information we have marked under section 552.117 to the extent that the employees whose information is at issue have elected under section 552.024 to keep this information private. Otherwise, you must release this information. Finally, the district must withhold the e-mail addresses we have marked under section 552.137. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 163991

Enc: Submitted documents

c: Mr. Larry Shaw
Executive Director
United Educators Association
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Fort Worth, Texas 76140
(w/o enclosures)